

The imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. (This is a PLR.)

March 11, 2003

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see [www.revenue.state.il.us/Laws/regs/part1200/](http://www.revenue.state.il.us/Laws/regs/part1200/)), is in response to your letter of September 11, 2003. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, AAA, we respectfully request the department issue a private letter ruling pursuant to 2 Ill. Adm. Code 1200.110 with respect to the following factual situation.

***General Information***

1. Enclosed please find an original Form IL-2848 Power of Attorney, authorizing FIRM to represent AAA, (the 'Seller') before the Illinois Department of Revenue (the 'Department').
2. This Private Letter Ruling ('PLR') is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the Retailers' Occupation Tax ('ROT') consequences of the actual business practice of the Seller.
3. The Seller is not currently engaged in litigation with the Department with regard to this or any other tax matter.
4. The Department has not previously ruled regarding this matter for the Seller. Neither the Seller nor FIRM has submitted the same or similar issue to the Department.
5. The Seller requests that certain information be deleted from the PLR prior to dissemination to others. The Seller requests that its name, the name of its

parent, address, the location of its facilities, description of products being sold, and the name of its representative be deleted.

6. The Seller knows of no authority contrary to the authorities referred to and cited below.

### ***Statement of Material Facts***

AAA is a STATE limited partnership that was formed by BBB and LLC. AAA operates as a centralized procurement entity that purchases and re-sells equipment to BBB and its affiliates. AAA recently established an office in CITY, Illinois. The CITY office and the procurement employee (hereinafter referred to as the 'procurement analyst') located therein are responsible for final order acceptance and authorization of customer orders.

In the State of Illinois, AAA's CITY office purchases select network assets from third party vendors for resale to BBB business units located within Illinois. When an BBB business unit determines that a purchase is necessary, the business unit makes a requisition through the Logistics and Inventory Control ('LOGIC') system, the network procurement support system. This facility is a comprehensive inventory management system that provides support for ordering network assets from AAA. Once initiated, the LOGIC requisition is submitted to AAA for order fulfillment.

Upon receiving a requisition from BBB's business unit, AAA prepares a purchase order and submits it directly to the network equipment vendor to initiate the purchase transaction. The network equipment vendor issues invoices to AAA for these purchases. In turn, AAA pays the network equipment vendor. To capture the sales activity occurring within the CITY office, AAA generates weekly reports that summarize its network equipment orders from vendors.

In order to effectuate the sale by AAA, BBB entered into a Master Sale Agreement ('MSA') with AAA. AAA collects the information from the purchase orders it issues to network equipment vendors on behalf of BBB and incorporates the information into a Schedule to the MSA. The Schedule serves as AAA's complete and unconditional offer to sell to BBB. Following a procedure outlined in the MSA, AAA sends the Schedule to BBB for signature by an authorized representative. BBB's authorized representative completes the Schedule signing and returning the Schedule to AAA's office in CITY. Under the terms of the MSA, the signing of the Schedule by BBB constitutes BBB's acceptance of AAA's complete and unconditional offer to sell.

AAA receives the signed Schedule from BBB in its office in CITY, where the Schedule is then signed by an authorized AAA employee. Under the terms of the MSA, the signature of the completed Schedule by an AAA employee in CITY is the final act which binds AAA to the terms of the sale.

### ***Issue***

Whether the approval process described above conclusively establishes CITY as the situs of the sale for Illinois Retailers' Occupation Tax ('ROT') purposes whereby the state and local tax rate in effect in CITY (e.g., 6.25%) applies to the sales described herein.

## **Relevant Authorities**

A home rule municipality, like CITY, may impose a retailers' occupation tax on companies engaged in selling at retail within the municipality. 65 ILCS 5/8-11-1; see also Ill. Admin. Code tit. 86, §§ 270.101(a), 270.115(a)(1).

The ROT statutes do not specifically address the rules for determining the proper location of the sale. However, substantial guidance can be found in the regulations issued by the Department of Revenue for the local Home Rule Municipal, Home Rule County, Regional Transportation Authority, Metro East Transit District, and Special Purpose County Retailers' Occupation Taxes. In addition, administrative regulations have the force of law in Illinois and are construed under the same rules that govern the construction of statutes. (Northern Illinois Automobile Wreckers & Rebuilders Ass'n v. Dixon (1979), 75 Ill. 2d 53, 18 Ill. 2d, 496, 165 N.E.2d 305, 387 N.E.2d 320 (1979), *cert. Denied*, 444 U.S. 844, 62 L. Ed. 2d 57, 100 S. Ct. 87).

Using consistent language, the local ROT regulations state that the Department considers the seller's acceptance of the purchase order or other contracting action in the making of the sales contract the most important single factor in the occupation of selling. Additionally, the regulations provide that if a purchase order *which is an acceptance of the seller's complete and unconditional offer to sell is received* by the seller's place of business or by someone working within a municipality that imposes Home Rule Municipal Occupation Tax ('HRMOT'), the seller incurs HRMOT liability in that jurisdiction. (86 Ill. Admin. Code Sec. 270.115).

Using identical language, the regulations state:

'Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of sections (f) and (g) of this section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by someone working out of such place of business, the seller incurs Municipal Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives physical possession of the property in Illinois.'

The Regulations further state that:

'Under a long term blanket or master contract which (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Home Rule Municipal Retailer's Occupation Taxes with respect to such orders.'

It appears that there are no previously issued letter rulings with the precise fact pattern as presented here. However, several rulings on this matter involved taxpayers with similar order acceptance procedures. These rulings indicate that the receipt of the customer's acceptance of the seller's complete and unconditional offer to sell at CITY2 conclusively establishes the situs of the sale in CITY2 and, consequently, CITY2's HRMROT applies to the Seller's sales.

In support of the ruling request, the following PLRs use consistent language stating, '.... if a purchase order which is an acceptance of the seller's *complete and unconditional offer to sell is received by the seller's place of business* within the municipality or by someone working out of such place of business, the seller incurs ROT liability in the respective jurisdiction.'

In PLR ST-00-0020, the Department ruled that the receipt of a signed contract representing a customer's acceptance of the taxpayer's complete and unconditional offer to sell goods established that city as the point in which the sale occurred. In issuing its ruling, the Department stated: 'Please note that receipt of an order is not necessarily acceptance. However, if when the order is received at City B, sellers become bound to perform the contract, without more, then a sale occurs in City B. If the contracts are thus accepted in City B, the state and local tax rate in effect in City B would be applied.'

In PLR 81-1566, the Department ruled that the Regional Transportation Authority ROT applied 'if the purchase order is accepted at the seller's place of business within the metropolitan region or by someone who is working out of such place of business...or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the metropolitan region or by someone working out of such place of business if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.'

PLR 82-0405 also indicates that 'if the purchase order is accepted at the seller's place of business within the municipality and if the purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received within the municipality, the seller incurs Municipal Retailers' Occupation Tax on that liability in that municipality if the sale is at retail and the purchaser receives physical possession of the property in Illinois.'

In PLR 83-0579, in addressing a taxpayer that was charging tax at a rate based on its customer's billing address, rather than its location in DeKalb County, the Department ruled that 'assuming that the purchase orders are accepted at the taxpayer's place of business within the City of DeKalb, or by someone working out of such place of business, or if the purchase order which is an acceptance of the taxpayer's complete and unconditional offer to sell is received by the taxpayer within such City, the taxpayer incurs local sales taxes of the City of DeKalb if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.'

In PLR 90-0857, the Department states that 'in determining whether there will be liability for the Home Rule Municipal Retailers' Occupation Taxes, the point at which the property will be used or consumed and the place at which the purchaser resides are immaterial. So long as your company does not have a place of business in a home rule

municipality or salespersons who accept purchase orders for your Seller in a home rule municipality that imposes a tax, you will incur no local tax liability. It should be noted that the same considerations apply for other locally imposed taxes such as the Regional Transportation Authority Tax and the DuPage County Water Commission Tax and the like.' Rather the Department determined that 'the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business in the home rule municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by someone working out of such place of business, the seller incurs Home Rule Municipal Retailers' Occupation Tax liability.'

The Department's analysis in the foregoing PLRs demonstrates the analysis to apply to determine the proper situsing of AAA's sales for sales tax purposes. AAA and BBB have entered into an Master Sales Agreement which specifies that AAA's complete and unconditional offer to sell (in the form of the Schedule signed by BBB) becomes binding upon AAA only when it is received and approved by AAA's employee at AAA's CITY office. Therefore, AAA's sales should be sitused in CITY for purposes of determining the municipal retailer's occupation tax.

FIRM knows of no authority contrary to the above-cited authorities.

### *Conclusion*

We respectfully request that the Department issue a ruling confirming that the receipt of a customer's acceptance of the Seller's unconditional offer to sell at CITY conclusively establishes CITY as the proper situs of the sale for ROT purposes such that the state and local tax rate (including CITY HRMROT) in effect in CITY applies.

If the Department cannot conclude that the receipt of a customer's acceptance of the Seller's unconditional offer to sell under the Department's regulations, I request that the Department contact me to determine what additional information is required or allow the taxpayer to rescind the ruling request.

Please feel free to contact me with any questions or to schedule a meeting to discuss any aspect of this ruling request. We appreciate your response on this issue.

As you know, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order or other contracting action in the making of the sales contract. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

Please note that subsection (d) of Section 270.115 states as follows:

"Under a long term blanket or master contract which (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific

orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Home Rule Municipal Retailers' Occupation Tax purposes with respect to such orders.”

The specific orders described in your letter are placed at the CITY office of AAA. Therefore, the local tax rate of CITY, Illinois applies to the sales by AAA.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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